

### **REMARKS / ARGUMENTS**

The present application includes pending claims 1-42, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1, 6-9, 12-15, 20-23, 26-29, 34-37 and 40-42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over USPP 20030140131 ("Chandrashekhar") in view of USP 6,751,729 ("Giniger"), and further in view of USP 7,174,564 ("Weatherspoon").

Claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chandrashekhar, Giniger and Weatherspoon, and further in view of USP 6,088,451 ("He").

The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

#### **I. Examiner's Response to Arguments**

At page 3 of the Office Action dated 5/7/2009, the Examiner disagreed with the Applicant that Weatherspoon does not disclose or suggest at least the limitation of "hosting said communication session over a third PHY channel, said third PHY channel established between said access point and said originating

access device,” as recited by the Applicant in independent claims 1, 15, and 29.

The Examiner states the following arguments:

“The authentication process enables access to any device on the wired LAN including the originating access device. This particular **access to any wired device includes establishing a data channel between the ASP and any device including the originating access device.** (Weatherspoon col 5, lines 29-34: **access between AP and any device including originating access device**).”

See page 3 of the Office Action (emphasis added). The Examiner, in effect, alleges that Weatherspoon’s “any other device on the wired LAN 120” includes the wireless device 106A (the alleged “originating access device”). The Examiner relies for support on the following citation of Weatherspoon:

“...The authentication server 110 will enable access to the wired LAN 120 by, e.g., **establishing a data channel between the AP and any other device on the wired LAN 120.** That is, **the authenticated AP and operator will have access to all LAN 120 resources available to wired devices such as devices 16A-D.**”

See Weatherspoon at col. 5, lines 29-34 (emphasis added). The Applicant points out that Weatherspoon in the above citation, clearly discloses that the data channel is established between the AP and **any other device on the wired LAN 120**, such as **wired devices such as devices 16A-D**. In this regard, **the Examiner’s allegation that Weatherspoon’s “any other device on the wired LAN 120” includes wireless devices such as wireless device 106A, is contrary to the disclosure of Weatherspoon.**

Based on the foregoing rationale, the Applicant maintains that Weatherspoon does not disclose or suggest at least the limitation of “hosting said

communication session over a third PHY channel, said third PHY channel established between said access point and said originating access device,” as recited by the Applicant in independent claims 1, 15, and 29. Weatherspoon does not overcome Chandrashekhar’s and Giniger’s deficiencies. Therefore, independent claims 1, 15, and 29 are submitted to be allowable.

## **II. Rejection Under 35 U.S.C. § 103(a)**

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 (“MPEP”) states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that “rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that “the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a

prima facie case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

**A. The Proposed Combination of Chandrashekhar, Giniger and Weatherspoon does not make claims 1, 15 and 29 unpatentable**

The Applicant first turns to the rejection of claims 1, 15, and 29 under 35 U.S.C. 103(a) as being unpatentable over Chandrashekhar and Giniger in view of Weatherspoon.

**A(1). Rejection of Independent Claims 1, 15 and 29 under 35 U.S.C. § 103 (a)**

With regard to the rejection of claims 1, 15, and 29 under 35 U.S.C. 103(a), the Applicant submits that the combination of Chandrashekhar, Giniger and Weatherspoon does not disclose at least the limitation of “hosting said communication session over a third PHY channel, said third PHY channel established between said access point and said originating access device,” as recited by the Applicant in independent claims 1, 15, and 29.

With regard to the above claim limitation, the Applicant maintains the arguments stated above. More specifically, Weatherspoon, in step 326, does not disclose or suggest that the enabled access to wired LAN 120 (i.e., the alleged

third PHY channel” between the AP 102A and the wired LAN 120 devices includes the wireless device 106A (i.e., the alleged “originating access device”).

In this regard, the Applicant maintains that Weatherspoon does not overcome the deficiencies of Chandrashekhar and Giniger, and does not disclose or suggest “said third PHY channel established between said access point and said originating access device,” as alleged by the Examiner.

Therefore, based on the foregoing arguments, the Applicant maintains that a prima facie case of obviousness has not been established by the combination of Chandrashekhar, Giniger and Weatherspoon to reject Applicant’s claim 1. The Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. 103(a) be withdrawn. Likewise, independent claims 15 and 29 are submitted to be allowable for the same rationale of independent claim 1.

Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1, 15, and 29.

**A(2). Rejection of Dependent Claims 6-9, 12-14, 20-23, 26-28, 34-37 and 40-42**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 15 and 29 under 35 U.S.C. § 103(a) as being unpatentable over Chandrashekhar and Giniger in view of Weatherspoon has been overcome and requests that the rejection be withdrawn. Additionally, claims 6-9, 12-14, 20-

23, 26-28, 34-37 and 40-42 depend directly or indirectly from independent claims 1, 15 and 29, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 6-9, 12-14, 20-23, 26-28, 34-37 and 40-42.

**B. The Proposed Combination of Chandrashekhar, Giniger, Weatherspoon and He Does Not Render Claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 Unpatentable**

The Applicant now turns to the rejection of claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 as being unpatentable under 35 U.S.C. §103(a) over Chandrashekhar and Giniger in view of He.

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 15 and 29 under 35 U.S.C. § 103a as being unpatentable over Chandrashekhar and Giniger in view of Weatherspoon has been overcome. He does not overcome the deficiencies of Chandrashekhar, Giniger and Weatherspoon. Since claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 are dependant directly or indirectly from independent claims 1, 15, and 29, respectively, the Applicant respectfully submits that the rejection of the dependent claims consequently be withdrawn and the claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 be allowed.

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**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-42 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and request that the Examiner telephone the undersigned Patent Agent at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: July 7, 2009

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